

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 815 OF 2003

Shri. Madanlal H. Batra
(since deceased by his legal heirs)
Mrs. Radha Madanlal Batra & Ors. ..Appellants

V/s
The Pune Cantonment Board. ..Respondent

Mr. A.M. Joshi for the Appellants.
Mr. V.G. Mujumdar for the Respondent.

CORAM: A.S.OKA, J.
DATE : 05.05.2005.

P.C.:

1. Heard Advocates appearing for the parties. The Appellants are the legal representatives of the original Plaintiffs and the Respondent is the original Defendant. The Plaintiff was disabled ex-serviceman. The case of the original Plaintiff is that the Respondent allotted a place to him for setting up his kiosk. By letter dated 20th December 1997 the Respondent informed the original Plaintiff that the place where the kiosk of the Plaintiff is located was to be converted into parking area and the original Plaintiff was directed to remove himself and shift elsewhere. Therefore, a suit came to be filed by the original Plaintiff against the Respondent. The suit was dismissed by the Trial Court. The appeal preferred by the legal heirs of the original Plaintiff was dismissed by the Appellate Court.

2. Shri. Joshi appearing for the Appellants submitted that the impugned notice which was subject matter of challenge before the Trial Court itself provided that the original Plaintiff will be given suitable place

elsewhere for setting up kiosk. He submitted that without making available accommodation to the Appellants elsewhere, the existing kiosk cannot be ordered to be shifted. He pointed out that on last occasion Shri. Mujumdar appearing for the Appellant stated that there is no place available at present which can be allotted to the Appellants. He submitted that as notice itself provides for allotment of another site, the notice cannot be implemented unless another site is made available. He submitted that action of issuing notice is itself malafied and the existing place of kiosk is not required by the Respondent.

3. Shri. Mujumdar appearing for the Respondent stated that the Respondent was earlier offering sites to the Appellants and also to the original Plaintiff. However, the original Plaintiff and thereafter the Appellants were not in mood to accept the site suggested by the Respondent. He has stated on instructions that if the Appellants make an application showing willingness for alternative site, the said application will be considered by the Respondent on merits.

4. I have considered the submissions. The Appellants have no right, title and interest in respect of site on which the kiosk is standing. Therefore, the original Plaintiff and the Appellants were under obligation to remove the kiosk as and when the site below the kiosk was needed by the Respondent. The Appellate Court has recorded a finding that the original Plaintiff admitted that the Respondent showed two or three alternative

sites to him for his business. The plaintiff also admitted that the Respondent-Board asked the original Plaintiff to show the alternative site for business. The Appellate Court has held that there is no material placed on record by the original Plaintiff to show that the sites offered by the Respondent were not suitable. It is held that there is no evidence on record to show as to why the Plaintiff did not suggest any other site.

5. The notice issued is of the year 1997. If the plaintiff was adamant and did not accept the sites which were shown to him and also failed to suggest any other site, it is not expected of a public body like Respondent to keep a site reserved for the Appellants for a long time when the Appellants have no right, title and interest in respect of the existing site on which the kiosk is situated. After having lost in both the courts now the Appellants cannot insist that they must be provided with another site. As stated earlier Shri. Mujumdar has stated that the Respondent-Board is willing to consider the application of the Appellants.

6. There is no merit in the Second Appeal and the same is dismissed with no orders as to costs. Till the time application of Appellants is considered by the Respondent-Board the Appellants deserve to be protected. Hence, I pass the following order:

: O R D E R :

i) The appeal is dismissed with no orders as to costs.

ii) If the Appellants make an application to the Respondent-Board for allotment of a suitable site within a period of two weeks from today, the same shall be considered by the Respondent-Board sympathetically and the application shall be decided within a period of eight weeks from the date on which the said application is received.

iii) If the application is made by the Appellants within a period of two weeks, the Respondent-Board will not disturb the existing kiosk of the Appellants till the final disposal of the application and for a further period of two weeks from the date of communication of the order on the said application to the Appellants.

iv) If no application is made by the Appellants within a period of two weeks, the Respondent-Board will be free to take action in accordance with the law.

v) Parties to act on an authenticated copy of this order.

(JUDGE)